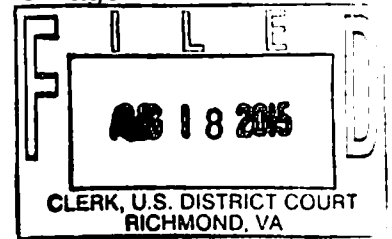


IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION



DIANE MOSBY,

Plaintiff,

v.

Case No. 3:15-cv-489

ALPS PROPERTY & CASUALTY
INSURANCE COMPANY d/b/a Attorneys
Liability Protection Society, A Risk Retention
Group;
JOSEPH S. MASSIE, III;
THE MASSIE LAW FIRM, P.C.,

Defendants.

**DEFENDANT ALPS PROPERTY & CASUALTY INSURANCE COMPANY'S
NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, Defendant ALPS Property & Casualty Insurance Company, f/k/a Attorneys Liability Protection Society, Inc., A Risk Retention Group ("ALPS"), incorrectly identified in Plaintiff Diane Mosby's ("Mosby") complaint for declaratory relief ("Complaint") as "ALPS Property & Casualty Insurance Company d/b/a Attorneys Liability Protection Society, A Risk Retention Group," hereby removes to this Court the above-captioned state court civil action pending in the Circuit Court of the City of Richmond.

1. On July 16, 2015, Mosby filed her Complaint against ALPS and Defendants Joseph S. Massie III ("Massie") and Massie Law Firm, PC ("Massie Law Firm") in the Circuit Court of the City of Richmond [Case No. 760CL15002991-00] ("State Court Action").

2. On July 29, 2015, Mosby served ALPS with a Summons and a copy of the Complaint. A true and correct copy of the Summons and Complaint served on ALPS is attached hereto as **Exhibit A**.

3. In her Complaint, Mosby seeks a declaration “that ALPS provide Massie and the Massie Law Firm with the full liability limits of its policy [One Million Dollars] with Massie” and “that ALPS defend and indemnify Massie and the Massie Law Firm in connection with Mosby’s underlying law suit [sic]” styled *Diane Mosby v. Joseph Massie III and Massie Law Firm PC*, Circuit Court of the City of Richmond, Case No. CL14005024-00 (“Underlying Suit”). (Ex. A at ¶ 8 and Prayer). A true and correct copy of the Complaint, without exhibits, filed in the Underlying Suit is attached hereto as **Exhibit B**.

4. Mosby is a Virginia resident. (Ex. A at ¶ 3)

5. Massie is a Virginia resident. (*Id.* at ¶ 4)

6. The Massie Law Firm is a Virginia corporation with its principal place of business in Richmond, Virginia. (*Id.*)

7. ALPS is an insurance company and corporation organized under the laws of the State of Montana with its principal place of business in the State of Montana.

8. Massie and the Massie Law Firm, although named as defendants in this action and in the Underlying Suit, are more properly aligned as plaintiffs in this action because their interests are the same as Mosby’s with respect to Mosby’s requested declaration regarding liability coverage for the Underlying Suit. *See, e.g., Smith v. Nationwide Mut. Fire Ins. Co.*, No. 3:14CV819-HEH, 2015 WL 364585, at * 2 (E.D. Va. Jan. 27, 2015) (realigning defendant tort claimant as co-plaintiff with insured against defendant liability insurer because tort claimant’s interests and insured’s interests were aligned in coverage dispute), *see also City of Indianapolis v. Chase Nat’l Bank of City of New York*, 314 U.S. 63, 69 (1941) (“Diversity jurisdiction cannot be conferred upon the federal courts by the parties’ own determination of who are plaintiffs and who are defendants. It is our duty, as it is that of the lower federal courts, to

look beyond the pleadings and arrange the parties according to their sides in the dispute.”) (citation omitted). As such, ALPS will be filing contemporaneously with its answer a motion to realign Massie and the Massie Law Firm as plaintiffs in this action.

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1332(a) because complete diversity of citizenship exists between all proper party plaintiffs, Mosby, Massie, and the Massie Law Firm and the only proper party defendant, ALPS, and the amount in controversy exceeds \$75,000, exclusive of interest and costs. *See* Exhibit A at ¶ 8 and Prayer (seeking declaration that ALPS provide Massie and the Massie Law Firm with the full liability limits of its policy [One Million Dollars] with Massie); Ex. B at page 7 (alleging compensatory damages of \$300,000).

10. This notice of removal is timely under 28 U.S.C. § 1446(b) because it is being filed within thirty days after ALPS was served with the Summons and a copy of the Complaint.

11. Massie and the Massie Law Firm, although named as defendants in this action, are more properly aligned with Mosby as party plaintiffs. Accordingly, ALPS need not obtain Massie and the Massie Law Firm’s consent before filing this notice of removal. *See* 28 U.S.C. § 1446(b)(2)(A); *Smith*, 2015 WL 364585, at * 3 (defendant tort claimant realigned as party plaintiff not required to consent to removal).

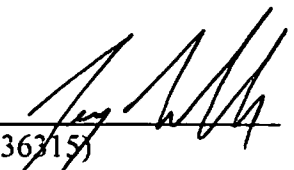
12. Pursuant to 28 U.S.C. § 1446(d), this notice of removal will be served upon all adverse parties and will be filed promptly in the State Court Action.

13. Pursuant to 28 U.S.C. § 1446(a), ALPS is filing contemporaneously herewith a copy of all the pleadings and papers filed with the state court. *See* Ex. A.

14. As of the date of this notice of removal, no hearings or other proceedings have been set in the State Court Action.

WHEREFORE, ALPS removes this action from Circuit Court of the City of Richmond to the United States District Court for the Eastern District of Virginia.

Dated: August 18, 2015
Richmond, Virginia


/s/ Jeremy S. Williams
Timothy S. Baird (VA 36315)
Jeremy S. Williams (VA 77469)

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Protection Society, A Risk Retention Group*

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2015, I caused to be served a true and correct copy of the foregoing document, by first class mail, postage pre-paid and electronic mail, on the following necessary parties:

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